

ADMINISTRATIVE PROCEDURE

Administrative Procedure Act

5 U.S.C. §§500–559, 561–570a, 571–584, 591–596

- The statute provides general rules concerning the **representation of persons before agencies**. [5 U.S.C. §500]
- The statute provides for **witnesses' fees and allowances**. [5 U.S.C. §503]
- Agencies engaged in **informal rulemaking** (where rules are not required by statute to be made on the record following a hearing) must generally provide adequate notice, allow public comment, publish substantive rules at specified times, and give interested persons the right to petition for issuance, amendment, or repeal. [5 U.S.C. §553]
- Agencies engaged in **formal adjudication** (required by the statute to be decided on the record following a hearing) must generally provide adequate notice and give interested parties opportunity to submit facts and arguments and to receive a hearing and decision. [5 U.S.C. §554]
- Interested persons may appear before an agency for the presentation or determination of an issue or request in a proceeding. [5 U.S.C. §554(c)]
- The statute limits **ex parte communications** and prosecutorial and investigatory activities by agency employees engaged in deciding adjudications. [5 U.S.C. §554(d)]
- An agency shall within a reasonable time proceed to conclude a matter presented to it. [5 U.S.C. §555(b)]
- The statute provides for the rights of persons who are compelled to provide evidence. [5 U.S.C. §555(b)]
- The agency shall provide prompt and adequate notice of the denial of a written request in connection with an agency proceeding. [5 U.S.C. §555(e)]
- The statute provides for the manner in which **hearings on the record** (for formal rulemaking and adjudications) shall be conducted. [5 U.S.C. §557]
- The statute provides for procedures to be followed when an agency employee renders a decision following such a hearing on the record and the decision is appealed to the agency itself. [5 U.S.C. §557]
- The statute provides for the rights of parties as to the submission of **proposed findings and conclusions** following such a hearing on the record. [5 U.S.C. §557(c)]
- The statute provides for the creation of a **record of decision**, including findings, conclusions, and reasons, following a hearing on the record. [5 U.S.C. §557(c)]
- **Ex parte communications** by or with the agency concerning a matter subject to a hearing on the record are generally prohibited. [5 U.S.C. §557(d)]
- The statute provides for the general procedures that an agency must follow in the granting and denial of licenses. [5 U.S.C. §558]
- The statute establishes a **negotiated rulemaking** framework for agency use in informal rulemaking. [5 U.S.C. §561] An agency may establish a negotiated rulemaking committee to develop a proposed rule if the use of the negotiated rulemaking procedure is in the public interest. [5 U.S.C. §563]
- If a negotiated rulemaking committee will be established, the agency shall give **appropriate notice**. [5 U.S.C. §564] If a negotiated rulemaking committee is not established, the agency shall promptly publish notice of its decision and the reasons therefore. [5 U.S.C. §565(a)]
- The statute provides for a negotiated rulemaking committee's required duties and procedures. [5 U.S.C. §566] A negotiated rulemaking committee must issue a report if it reaches a consensus proposed rule. [5 U.S.C. §566(f)]
- Agency action relating to a negotiated rulemaking committee shall not be subject to **judicial review**. [5 U.S.C. §570] If judicial review is otherwise provided by law, a negotiated rulemaking committee rule is subject to judicial review. [5 U.S.C. §570]
- **Alternative dispute resolution** may be used to address disputes in the administrative process. [5 U.S.C. §§571-584]
- The statute establishes who may seek **judicial review** of an agency action, the applicable form of appellate proceeding, what kinds of agency actions are reviewable, when courts may grant relief pending review, and the applicable scope of review. [5 U.S.C. §§701-706; 28 U.S.C. §§2341-2353]
- Before a rule can take effect, it must pass **congressional review**. [5 U.S.C. §§801-808] The agency promulgating a rule must submit to each House of Congress a report containing a copy of the rule, a concise general summary of the rule, and the rule's proposed effective date. [5 U.S.C. §801] In a joint resolution, Congress can disapprove of the rule and render it without force or effect. [5 U.S.C. §802] The President can veto a joint resolution of disapproval. [5 U.S.C. §801]

Freedom of Information Act

5 U.S.C. §552–552a

- Each agency shall publish in the *Federal Register* descriptions of its organizations, method of functioning, procedural and substantive rules, and explanations for how the public may obtain information for all of the above. Matters required to be published in the *Federal Register* and not so published are not binding on persons who do not have actual and timely notice. [5 U.S.C. §552(a)(1)]
- Agencies generally must make available for public inspection and copying their opinions and orders, statements of policy and interpretations, and administrative staff manuals and instructions, including indexes and supplements. These materials may only be relied on or cited as precedent against a party without actual notice if they have been indexed and either published or otherwise made available. [5 U.S.C. §552(a)(2)]
- An agency shall promptly comply with proper requests for records not published or made available for public inspections. [5 U.S.C. §552(a)(3)]
- Each agency shall promulgate regulations establishing reasonable fees for processing requests, limited to the cost of search, duplication, or review. [5 U.S.C. §552(a)(4)]
- Certain documents must be furnished free of charge if disclosure is in the public interest. [5 U.S.C. §552(a)(4)(A)(iii)]
- An agency generally may not require advance payment of fees. [5 U.S.C. §552(a)(4)(A)(v)]
- An action regarding waiver of fees shall be heard de novo, but review shall be limited to the record before the agency. [5 U.S.C. §552(a)(4)(A)(vii)]
- The Act provides for jurisdictional and procedural rules governing actions to enjoin an agency from withholding records and other actions. [5 U.S.C. §552(a)(4)(B)] A court may assess attorneys fees and other litigation costs against the United States when a complainant substantially prevails. [5 U.S.C. §552(a)(4)(E)]
- The Act provides for the procedure to be followed for disciplinary action against an officer or employee who arbitrarily and capriciously withholds records. [5 U.S.C. §552(a)(4)(F)]
- A court that orders production of agency records may punish noncomplying agency employees for contempt. [5 U.S.C. §552(a)(4)(G)]
- Agencies shall make available the final votes of each member in agency proceedings. [5 U.S.C. §552(a)(5)]
- The Act provides for procedures an agency must follow in responding to requests and appeals, including specific deadlines. [5 U.S.C. §552(a)(6)]
- Agency matters exempt from disclosure include matters relating to national defense or foreign policy, an agency's internal personnel rules, matters specifically exempted by statute, trade secrets and privileged or confidential commercial matters, inter- and intra-agency memoranda not available by law outside of litigation, personnel or medical files, records or documents compiled for law enforcement purposes to the extent disclosure could reasonably be expected to harm individuals or ongoing investigations, reports prepared by or for an agency regulating financial institutions, and geological or geophysical data concerning wells. [5 U.S.C. §552(b)]
- The Act does not authorize withholding information from Congress. [5 U.S.C. §552(d)]

AIR QUALITY

Clean Air Act 42 U.S.C. §§7401-7671q

National ambient air quality standards (NAAQS)

- EPA must promulgate **primary NAAQS** necessary to protect the **public health**, allowing for an adequate margin of safety. [42 U.S.C. §7409, CAA §109]
- EPA must promulgate **secondary NAAQS** necessary to protect the **public welfare**. [42 U.S.C. §7409, CAA §109] "Public welfare" includes effects on soils, water, crops, animals, weather, visibility, economic values, and personal comfort and well-being. [42 U.S.C. §7602(h), CAA §302(h)]

State implementation plans (SIPs)

- Each state must submit to EPA SIPs for the implementation, maintenance, and enforcement of primary and secondary NAAQS. [42 U.S.C. §7410, CAA §110] EPA must promulgate a **federal implementation plan** if a state fails to submit a SIP or revise a SIP that EPA deems inadequate. [42 U.S.C. §7410(c), CAA §110(c)]

Nonattainment of NAAQS

- States are divided into areas; areas are designated as **attainment**, **nonattainment**, or **unclassifiable**. [42 U.S.C. §7407(d), CAA §107(d)] Nonattainment areas are further classified based on the severity of nonattainment and the availability and feasibility of pollution control measures necessary for attainment. [42 U.S.C. §7502(a), CAA §172(a)]
- Nonattainment areas for primary NAAQS must achieve attainment as expeditiously as practicable, but not later than five years after designation. Nonattainment areas for secondary NAAQS must achieve attainment as expeditiously as practicable. EPA may extend the attainment deadlines in certain cases. [42 U.S.C. §7502(a)(2), CAA §172(a)(2)]
- CAA §172(c) (42 U.S.C. §7502(c)) sets forth requirements for the content of nonattainment-area SIPs.
- Before a new **major stationary source**, or a **modification** to an existing source, may be constructed in a nonattainment area, offsetting emission reductions must be obtained from the same source or other sources in the same nonattainment area. [42 U.S.C. §7503(c), CAA §173(c)]
- Special provisions exist for areas that are nonattainment for **ozone** [42 U.S.C. §§7511-7511f, CAA §§181-185B]; **carbon monoxide (CO)** [42 U.S.C. §§7512-7512a, CAA §§186-187]; **particulate matter**

[42 U.S.C. §§7513-7513b, CAA §§188-190]; and **sulfur oxides, nitrogen dioxide, and lead**. [42 U.S.C. §§7514-7514(a), CAA §§191-192]

Prevention of significant deterioration (PSD)

- SIPs must contain requirements to prevent significant deterioration of air quality in regions designated as **attainment** or **unclassifiable**. [42 U.S.C. §7471, CAA §161]
- The statute establishes a **three-tiered classification** system. **Class I** areas, which are subject to the greatest emission limitations, include **national parks** exceeding 6,000 acres and **national wilderness and memorial parks** exceeding 5,000 acres. All other areas are classified as **Class II** areas, except that such areas may be redesignated as **Class III** areas in certain limited circumstances. [42 U.S.C. §§7472, 7474(a), CAA §§162, 164(a)]
- **Preconstruction permits** are required for the construction in PSD areas of "**major emitting facilities**" on which construction began after August 7, 1977. [42 U.S.C. §7475, CAA §165] Permits must require facilities to employ **best available control technology (BACT)** for regulated pollutants. [42 U.S.C. §7475(a)(4), CAA §165(a)(4)]
- EPA must promulgate regulations to prevent the significant deterioration of air quality resulting from **hydrocarbon, CO, photochemical oxidant, and nitrogen oxide (NO_x)** pollutant emissions. [42 U.S.C. §7476(a), CAA §166(a)] EPA must promulgate regulations to address the impairment of **visibility** in **Class I** areas resulting from man-made air pollution. [42 U.S.C. §7479(a), CAA §169A(a)]

New source performance standards (NSPS)

- EPA must promulgate regulations establishing **NSPS** for categories of stationary sources. [42 U.S.C. §7411(b), CAA §111(b)] NSPS must reflect the emission limitations achievable through the best system of emission reduction. EPA must consider the cost of achieving reduction, as well as nonair quality health and environmental impact and energy requirements. [42 U.S.C. §7411(a)(1), CAA §111(a)(1)]
- **Permits for major new or modified sources** in nonattainment areas must require compliance with the **lowest achievable emission rate (LAER)**. [42 U.S.C. §7503(a)(2), CAA §173(a)(2)]

- Each state may develop its own procedure for implementing and enforcing NSPS, and EPA must delegate implementation authority to states whose procedures it finds adequate. [42 U.S.C. §7411(c), CAA §111(c)] Each state must submit to EPA a plan that establishes, and provides for the implementation of, performance standards for existing stationary sources. [42 U.S.C. §7411(d), CAA §111(d)]

Hazardous air pollutants (HAPs)

- The statute lists **189 HAPs** and directs EPA to revise the list periodically. [42 U.S.C. §7412(b), CAA §112(b)]
- EPA must publish and periodically modify a list of categories and subcategories of major and area sources of HAPs. [42 U.S.C. §7412(c), CAA §112(c)] CAA §112(a) (42 U.S.C. §7412(a)) defines "major source" and "area source."
- EPA must promulgate **emission standards** for categories and subcategories of major and area sources of HAPs. [42 U.S.C. §7412(d)(1), CAA §112(d)(1)] The standards must require the **maximum degree of reduction** in HAP emissions achievable for new or existing sources in the category or subcategory. EPA must consider the cost of achieving reduction, as well as nonair quality health and environmental impact and energy requirements. [42 U.S.C. §7412(d)(2), CAA §112(d)(2)] EPA may promulgate **area source standards** that provide for using **generally available control technologies** or management practices in lieu of meeting the §112(d)(2) (42 U.S.C. §7412(d)(2)) requirements. [42 U.S.C. §7412(d)(5), CAA §112(d)(5)] If EPA determines that it is infeasible to prescribe or enforce an emission standard, EPA may promulgate a design, equipment, work practice, and/or operational standard. [42 U.S.C. §7412(h), CAA §112(h)]
- The statute sets **strict deadlines** for promulgation of, and compliance with, the emission standards. [42 U.S.C. §7412(e), (i), CAA §112(e), (i)]
- EPA must report to Congress on **residual risks** to public health remaining after application of the emission standards. If Congress fails to act, EPA must promulgate additional standards. [42 U.S.C. §7412(f), CAA §112(f)] EPA must promulgate **residual risk standards** for pollutants classified as known, probable, or possible human carcinogens if the §112(f) (42 U.S.C. §7412(f)) emission standards fail to reduce the **lifetime cancer risk** of the "most exposed" individual to less than one-in-one million. [42 U.S.C. §7412(f)(2), CAA §112(f)(2)]
- Source modifications must comply with **maximum achievable control technology**. [42 U.S.C. §7412(g)(2), CAA §112(g)(2)]

Operating permits

- EPA must promulgate standards for a state-administered operating permit program. [42 U.S.C.

§7661a(b), CAA §502(b)] States must submit permit programs to EPA for approval. [42 U.S.C. §7661a(d), CAA §502(d)]

- Sources required to obtain operating permits include "major sources," "affected sources," sources subject to CAA §111 (42 U.S.C. §7411) NSPS, air toxic sources regulated under CAA §112 (42 U.S.C. §7412), sources required to have new source or modification permits under Title I pts. C or D, and other sources designated by EPA. [42 U.S.C. §7661a(a), CAA §502(a)]

Mobile sources

- EPA must establish **emission standards** for new motor vehicles and engines [42 U.S.C. §7521(a), CAA §202(a)], subject to specified limitations for hydrocarbon, CO, and NO_x emissions by "light-duty" vehicles. [42 U.S.C. §7521(b), CAA §202(b)] EPA may set standards for heavy-duty vehicles after model year 1983, reflecting the greatest degree of emission reduction achievable for that model year. [42 U.S.C. §7521(a)(3), CAA §202(a)(3)]
- SIPs for states in certain ozone and CO nonattainment areas must require a specific percentage of fleet vehicles to be "clean fuel vehicles," beginning with model year 1998. [42 U.S.C. §7586, CAA §246] CAA §249 (42 U.S.C. §7589) establishes a pilot program for California. Other states may opt into the California program. [42 U.S.C. §7589, CAA §249]
- EPA may require motor vehicle fuels to be registered and tested. [42 U.S.C. §7545, CAA §211] No manufacturer or processor may sell any EPA-designated fuel or additive that has not been registered by EPA. [42 U.S.C. §7545(a), CAA §211(a)]

"Acid rain"

- Title IV-A's goal is to reduce **annual sulfur dioxide (SO₂) emissions** from fossil fuel-fired electric utility plants by 10 million tons below 1980 levels and **annual NO_x emissions** by 2 million tons below 1980 levels. [42 U.S.C. §7651(b), CAA §401(b)]
- In **Phase I**, beginning January 1, 1995, 110 plants will receive **allowances** to emit SO₂ based on 1985-87 fuel consumption. [42 U.S.C. §7651c(a), CAA §404(a)] In **Phase II**, beginning January 1, 2000, utilities will receive reduced SO₂ allowances, totaling 8.9 million tons. [42 U.S.C. §7651d, CAA §405] Allowances may be used, sold, or carried forward. [42 U.S.C. §7651b(a), (b), CAA §403(a), (b)]
- EPA must establish **NO_x emission limits** for certain types of boilers [42 U.S.C. §7651f, CAA §407] and issue revised NSPS for NO_x emissions from fossil fuel-fired steam-generating units. [42 U.S.C. §7411, CAA §111]

Stratospheric ozone protection

- EPA must publish and revise lists of ozone-depleting substances, designated **Class I** or **Class II**. The **Class I** list must initially include specified chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform. The **Class II** list must initially include specified hydrochlorofluorocarbons. [42 U.S.C. §7671a(a), (b), CAA §602(a), (b)]
- The statute requires **Class I** substances to be phased out by **January 1, 2000** (January 1, 2002 for methyl chloroform) [42 U.S.C. §7671c, CAA §604] and **Class II** substances by **January 1, 2030** (subject to limited exceptions that terminate on January 1, 2040). [42 U.S.C. §7671d, CAA §605]

Enforcement

- CAA §113 (42 U.S.C. §7413) authorizes EPA to issue administrative compliance and penalty orders, and seek injunctions and civil and criminal penalties. EPA has emergency response authority. [42 U.S.C. §§7412(r)(9), 7603, CAA §§112(r)(9), 303] States may enforce SIP requirements. [42 U.S.C. §7410(a)(2)(C), CAA §110(a)(2)(C)] CAA §304 (42 U.S.C. §7604) authorizes citizen suits.

GENERAL ENVIRONMENTAL LAW

National Environmental Policy Act 42 U.S.C. §§4321–4370d

Purpose

- The statute sets forth the **general policy** of the federal government concerning the environment. [42 U.S.C. §4321, NEPA §2] The regulations and laws of the United States should be interpreted and administered according to this policy. [42 U.S.C. §4332(1), NEPA §102(1)]
- The federal government, in cooperation with **state and local governments** and other concerned public and private organizations, shall use **all practicable means** to foster and promote the **general welfare**; develop conditions for the **harmonious coexistence of people and nature**; and fulfill the social, economic, and other requirements of **present and future generations** of Americans. [42 U.S.C. §4331(a), NEPA §101(a)]
- The federal agencies shall use a **systematic interdisciplinary** approach in making decisions that may affect the environment. [42 U.S.C. §4332(2)(A), NEPA §102(2)(A)]

Environmental impact statements (EISs)

- For all major federal actions **significantly affecting the quality of the human environment**, federal agencies shall prepare a detailed statement on the environmental impact of the proposed action. The statute establishes the **requirements** for such statements and the **procedures** for preparing them. [42 U.S.C. §4332(2)(C), NEPA §102(2)(C)]

- Under certain circumstances, **state agencies or officials** may prepare EISs for major federal actions funded under programs of grants to states. This does not relieve federal officials of their responsibility for such EISs. [42 U.S.C. §4332(2)(D), NEPA §102(2)(D)]

- **Federal agencies** shall develop and describe appropriate **alternatives to a recommended course of action** in any proposal that involves unresolved conflicts concerning **alternative uses of available resources**. [42 U.S.C. §4332(2)(E), NEPA §102(2)(E)]

Environmental Quality Reports

- The President shall submit to Congress an annual **Environmental Quality Report** describing the **status** of the nation's environment and **trends** in the quality and use of the environment. [42 U.S.C. §4341, NEPA §201]

Council on Environmental Quality (CEQ)

- The statute creates the **CEQ** to advise the President on the preparation of the Environmental Quality Report, to **gather information** concerning trends in the quality of the environment, to **appraise actions** of the federal government in light of the policies set forth in this Act, to **make recommendations**, and to **conduct studies**. [42 U.S.C. §§4342, 4344, NEPA §§202, 204]

HAZARDOUS SUBSTANCES AND TOXIC WASTE

Resource Conservation and Recovery Act 42 U.S.C. §§6901-6992k

Hazardous waste management (Subtitle C)

"Hazardous waste" and "solid waste"

- **"Solid waste"** is discarded material other than (i) solid or dissolved material in domestic sewage; (ii) solid or dissolved material in irrigation return flows; (iii) industrial discharges that are point sources subject to Federal Water Pollution Control Act (FWPCA) permitting; and (iv) source, special nuclear, or byproduct material as defined by the Atomic Energy Act. [42 U.S.C. §6903(27), RCRA §1004(27)]
- **"Hazardous waste"** is solid waste that is potentially dangerous to human health or the environment. [42 U.S.C. §6903(5), RCRA §1004(5)]
- The Act requires EPA to determine which hazardous wastes should be subject to Subtitle C by identifying hazardous waste characteristics and by listing specific substances as hazardous wastes. In determining these characteristics, EPA must consider toxicity, persistence, degradability in nature, potential for accumulation in tissue, flammability, and corrosiveness. [42 U.S.C. §6921(a), (b), RCRA §3001(a), (b)]

Hazardous waste generation, transportation, treatment, storage, and disposal

- The Act requires EPA to promulgate standards applicable to generators and transporters of characteristic or listed hazardous waste and owners and operators of facilities for treatment, storage, and disposal (TSD) of such wastes. Standards for generators must include requirements for recordkeeping, labeling, using containers, furnishing information to transporters and TSD facilities, manifesting, and submitting reports to EPA or the appropriate state agency. Standards for transporters must include requirements for recordkeeping, labeling, manifesting, and delivering waste to permit-holding TSD facilities designated on the manifest form. Standards for TSD facility owners and operators must include requirements for recordkeeping; manifesting; operating methods, techniques, and practices; facility location, design, and construction; contingency plans to minimize unanticipated facility damage; maintenance, personnel training, and financial responsibility; and permit compliance. [42 U.S.C. §§6922-6924, RCRA §§3002-3004] The Act requires promulgation of regula-

tions for control of air emissions at TSD facilities and establishes minimum technological requirements for certain waste management units. [42 U.S.C. §6924(n), (o), RCRA §3004(n), (o)] The Act requires EPA to promulgate regulations regarding hazardous wastes used as fuel and requires labeling of hazardous waste fuels. [42 U.S.C. §6924(q), (r), RCRA §3004(q), (r)]

Permits

- The Act requires EPA to promulgate regulations requiring owners and operators of existing and planned TSD facilities to obtain permits and prohibiting unpermitted treatment, storage, or disposal of characteristic and listed hazardous waste. [42 U.S.C. §6925(a), RCRA §3005(a)] The Act grants "interim status" to any facility in existence on November 19, 1980 or on the effective date of a statutory or regulatory change that subjected the facility to the permitting requirement, provided that the facility complied with the notification requirement of RCRA §3010(a) (42 U.S.C. §6930) and applied for a permit under RCRA §3005 (42 U.S.C. §6925). An interim status facility is treated as having been issued a permit until a final administrative disposition of its permit application has been made. Interim status granted to a land disposal facility before November 8, 1984, terminates on November 8, 1985, unless the facility operator or owner applies for a final permit determination before November 8, 1985, and certifies that the facility complies with applicable groundwater monitoring and financial responsibility requirements. [42 U.S.C. §6925(e), RCRA §3005(e)] EPA may suspend or revoke interim status if EPA determines that there has been a release of hazardous waste from an interim status facility. [42 U.S.C. §6928(h), RCRA §3008(h)]

Corrective action

- Permits must require corrective action for hazardous waste or hazardous waste constituent releases at TSD facilities. [42 U.S.C. §6924(u), RCRA §3004(u)] In addition, EPA must require TSD facility owners and operators to perform corrective action beyond a facility's boundaries when necessary to protect human health and the environment. [42 U.S.C. §6924(v), RCRA §3004(v)] EPA may order corrective action at interim status facilities when necessary to protect human health and the environment. [42 U.S.C. §6928(h), RCRA §3008(h)]

Land disposal restrictions

- The Act prohibits placement of bulk or noncontainerized liquid hazardous wastes in landfills and, in general, bans placement of liquids that are not hazardous waste in hazardous waste landfills. [42 U.S.C. §6924(c), RCRA §3004(c)] The Act also bans land disposal of certain wastes absent an administrative determination that banning a method of land disposal is not necessary after a demonstration that there will be no migration of hazardous constituents from the disposal unit for as long as the waste remains hazardous. [42 U.S.C. §6924(d), (e), RCRA §3004(d), (e)]. The Act requires EPA to ban disposal of certain wastes by deep injection into underground wells if it may be reasonably determined that such disposal may not be protective of human health and the environment for as long as the waste remains hazardous. [42 U.S.C. §6924(f), RCRA §3004(f)] The Act requires EPA to submit a schedule for making land disposal determinations for characteristic and listed hazardous wastes. Exemptions from some land disposal and underground injection requirements can be obtained if the waste is treated and discharged pursuant to a national pollutant discharge elimination system (NPDES) permit or is pretreated pursuant to FWPCA. [42 U.S.C. §6924(g), RCRA §3004(g)]. The Act authorizes EPA to establish certain variances from land disposal prohibitions. [42 U.S.C. §6924(h), RCRA §3004(h)] The Act prohibits storage of hazardous wastes that are prohibited from land disposal unless such storage is for the sole purpose of accumulating enough waste to recover, treat, or dispose of it properly. [42 U.S.C. §6924(j), RCRA §3004(j)] The Act requires EPA to promulgate treatment standards for wastes subject to land disposal restrictions and provides that hazardous wastes that have been treated to such standards may be disposed of in a land disposal facility. [42 U.S.C. §6924(m), RCRA §3004(m)]

State programs

- States may apply to EPA for authority to administer and enforce their own hazardous waste programs in lieu of the federal program. A state may not implement its own program if EPA finds that the state program is not equivalent to the federal program, is not consistent with federal or state programs in other states, or does not provide adequate enforcement of compliance with Subtitle C. [42 U.S.C. §6926(b), RCRA §3006(b)] States may not impose requirements that are less stringent than those imposed by Subtitle C regulations covering the same subject. [42 U.S.C. §6929, RCRA §3009]

Enforcement

- If EPA determines that a person has violated Subtitle C, it may issue orders assessing civil penalties and requiring compliance, or it may commence a civil action in U.S. district court. [42 U.S.C. §6928(a), RCRA §3008(a)] Anyone knowingly transporting hazardous waste to an

unpermitted facility or knowingly treating, storing, or disposing of hazardous waste without a permit or in violation of a permit or interim status regulations is subject to criminal fines and imprisonment. [42 U.S.C. §6928(d), RCRA §3008(d)] Anyone who knowingly commits any such act and thereby places another person in imminent danger of death or serious bodily injury is subject to additional criminal fines and imprisonment. [42 U.S.C. §6928(e), RCRA §3008(e)]

Used oil

- The Act requires EPA to determine whether to list or identify used crankcase oil as hazardous waste. The Act exempts from RCRA §§3001(d), 3002, and 3003 (42 U.S.C. §§6921(d), 6922, and 6923) generators and transporters of used oil that is listed or identified as hazardous waste if such used oil is recycled. The Act also authorizes EPA to promulgate regulations governing recycling of used oil. [42 U.S.C. §6935, RCRA §3014]

Nonhazardous solid waste management (Subtitle D)

- The Act requires EPA to promulgate regulations for determining whether a facility is an open dump or a sanitary landfill. At a minimum, sanitary landfills are facilities at which there is no reasonable probability of adverse effects on health or the environment from the disposal of solid waste. [42 U.S.C. §6944(a), RCRA §4004(a)] The Act prohibits open dumps. [42 U.S.C. §6945(a), RCRA §4005(a)]
- The Act authorizes federal grants to assist states in developing and implementing EPA-approved solid waste management plans. [42 U.S.C. §6948, RCRA §4008] To obtain EPA approval, a plan must, among other things, prohibit new open dumps and provide for the closing or upgrading of existing open dumps. [42 U.S.C. §6943(a), RCRA §4003(a)]

Citizen suits

- Anyone may commence a civil suit against any person (including the United States or, subject to the U.S. Constitution's Eleventh Amendment, any governmental agency) for violations of RCRA permits, regulations, or other requirements. [42 U.S.C. §6972(a)(1)(A), RCRA §7002(a)(1)(A)] Anyone may commence a civil suit against any person (including the United States or, subject to the U.S. Constitution's Eleventh Amendment, any governmental agency) who has contributed or is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste that may present an imminent and substantial endangerment to health or the environment. [42 U.S.C. §6972(a)(1)(B), RCRA §7002(a)(1)(B)] Anyone may commence a civil suit against EPA for an alleged failure to perform a nondiscretionary duty. [42 U.S.C. §6972, RCRA §7002]

EPA "imminent and substantial endangerment" suits

- EPA may bring suit against any person who has contributed or is contributing to the handling, storage, treatment, transportation, or disposal of any solid or hazardous waste that may present an imminent and substantial endangerment to health or the environment. [42 U.S.C. §6973(a), RCRA §7003(a)]

Underground storage tanks (USTs) (Subtitle I)

- Each owner of a UST must notify the appropriate state or local agency of the existence of the UST, specifying its age, size, type, location, and uses. [42 U.S.C. §6991a(a)(1), RCRA §9002(a)(1)] The Act requires EPA to develop regulations for UST leak detection, prevention, and cleanup. [42 U.S.C. §6991b(a), RCRA §9003(a)] EPA may approve a state UST program in lieu of the federal program if the state program is at least as stringent as the federal program. If EPA approves the state program, the state has primary enforcement responsibility for that program. [42 U.S.C. §6991c(a), (b), (d), RCRA §9004(a), (b), (d)]

Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("Superfund")

42 U.S.C. §§9601–9675

Notification and recordkeeping

- The statute imposes notification requirements on persons who handle, store, or dispose of hazardous substances. [42 U.S.C. §9603, CERCLA §103]

Response authorities

- When a hazardous substance or a pollutant that may present an **imminent and substantial danger** to the public health or welfare is released or about to be released, the President may remove such substance, provide for long-term remedial action, or take any other action necessary to protect the public health or welfare or the environment. The President may under such circumstances allow the responsible party to carry out the response action. [42 U.S.C. §9604(a)(1), CERCLA §104(a)(1)]
- The statute establishes the amount of money available from the **Hazardous Substance Superfund** for response actions, and provides for federal and state **cost sharing** of response costs. [42 U.S.C. §9604(c), CERCLA §104(c)]
- A state, political subdivision, or Indian tribe under certain circumstances may be permitted to enter into a **cooperative agreement** with the President to carry out response actions and to be reimbursed for reasonable costs. [42 U.S.C. §9604(d), CERCLA §104(d)]
- Federal or state (states with cooperative agreements) representatives may require persons who handle hazardous substances to furnish information concerning the ability of such persons to pay for or perform a cleanup. [42 U.S.C. §9604(e)(2), CERCLA §104(e)(2)] If there is reasonable basis to believe that there may be a release or threatened release of a hazardous substance, the governmental representative is authorized to enter the facility in question for **inspection and sampling**. [42 U.S.C. §9604(e)(3) & (4), CERCLA §104(e)(3) & (4)]

National Contingency Plan (NCP)

- The President shall publish an NCP to provide for efficient and coordinated action to minimize damage from oil and hazardous substance discharges. The NCP shall contain a national hazardous substance response plan, which shall establish procedures and standards for responding to releases of hazardous substances. [42 U.S.C. §9605(a), CERCLA §105(a)]
- The statute establishes the minimum requirements of the hazardous substance response plan, including methods of determining priorities among releases. Priorities shall be based upon relative risk or danger to public health

or welfare or the environment. [42 U.S.C. §9605(a), CERCLA §105(a)] The President shall list releases in order of their priority (the **national priorities list**, or NPL). [42 U.S.C. §9605(a)(8)(B), CERCLA §105(a)(8)(B)]

- Any person affected by a release may petition the President to conduct a preliminary assessment of the release's hazards. If the release may pose a threat to human health or the environment, the President shall determine the national priority of the release. [42 U.S.C. §9605(d), CERCLA §105(d)]

Abatement actions

- When the President determines that there may be an **imminent and substantial endangerment** to the public health or welfare or the environment because of an actual or threatened release, he may require the Attorney General to secure such relief necessary to abate the danger. The President may also take other action, such as issuing such orders as necessary to protect the public health and welfare and the environment. [42 U.S.C. §9606(a), CERCLA §106(a)]
- Persons complying with abatement orders may petition for reimbursement from the Fund. [42 U.S.C. §9606(b), CERCLA §106(b)]

Liability

- **Owners and operators** of facilities at which hazardous substances are located, persons who arrange for the **disposal** of hazardous substances, and persons who accept hazardous substances for transport to disposal and treatment facilities shall be **liable for response costs** incurred by the government consistent with the NCP. [42 U.S.C. §9607(a), CERCLA §107(a)]
- Such persons shall also be liable for any other necessary response costs incurred by any other person consistent with the NCP, natural resource damages (liability shall be to the government), and the costs of certain **health assessments** or studies. [42 U.S.C. §9607(a), CERCLA §107(a)]
- The statute establishes **defenses and limits to liability**. [42 U.S.C. §9607(b), CERCLA §107(b)]
- The disposal of **de minimis** amounts of hazardous substances and **municipal solid waste** are exempt from liability. [42 U.S.C. §§9607(o), (p), CERCLA §§107(o), (p)] Innocent purchasers, contiguous landowners, and qualified bona fide prospective purchasers may also be exempt from liability under the statute. [42 U.S.C.

§§9601(35), 9601(40) & 9607(q), CERCLA §§101(35), 101(40) & 107(q)]

- Certain persons engaged in the transaction of recycled materials are exempt from liability. [42 U.S.C. §9627, CERCLA §127]

Financial responsibility

- The statute requires that handlers of hazardous substances maintain certain levels of financial responsibility. [42 U.S.C. §9608, CERCLA §108]

Civil and criminal penalties

- The statute establishes administrative and judicial penalties for various violations. [42 U.S.C. §9609, CERCLA §109]

Uses of the Fund

- Authorized uses of the Fund include payment of government response costs and payment of necessary and approved response costs incurred by other persons carrying out the NCP. [42 U.S.C. §9611, CERCLA §111] The statute also provides for reimbursement from the Fund for certain natural resource damage claims. [42 U.S.C. §9611(h), CERCLA §111(h)]

Claims procedure

- No claim may be asserted against the Fund unless it is first presented to the person, such as the owner of the facility, who may be responsible for the release (potentially responsible party, or PRP). [42 U.S.C. §9612(a), CERCLA §112(a)]
- The statute establishes procedural rules governing claims against the Fund, including a statute of limitations of six years from the completion of all response action. [42 U.S.C. §9612, CERCLA §112]

Civil proceedings

- The statute provides jurisdictional and procedural rules governing civil actions. [42 U.S.C. §9613, CERCLA §113]
- Any person may seek contribution from any other potentially liable person during or following any CERCLA §§106 or 107 (42 U.S.C. §§9606 or 9607) action. [42 U.S.C. §9613(f)(1), CERCLA §113(f)(1)] The court in a contribution claim may allocate response costs among liable parties using appropriate equitable factors. [42 U.S.C. §9613(f), CERCLA §113(f)] Any person who has settled with the United States shall not be subject to contribution regarding settlement matters. [42 U.S.C. §9613(f)(2), CERCLA §113(f)(2)]
- Judicial review of abatement actions and response actions is limited. [42 U.S.C. §9613(j), CERCLA §113(j)]

- The President shall establish a record of decision (ROD) on which the selection of a response action is based. [42 U.S.C. §9613(k), CERCLA §113(k)]

- The President shall provide for the participation of interested persons, including PRPs, in the development of the ROD. [42 U.S.C. §9613(k)(2), CERCLA §113(k)(2)]

Relationship to other law

- States may impose additional liability or requirements concerning the release of hazardous substances. [42 U.S.C. §9614(a), CERCLA §114(a)]
- No one may receive compensation for the same damage from the Fund and pursuant to any other state or federal law. [42 U.S.C. §9614(b), CERCLA §114(b)]

Response action contractors

- A response action contractor with respect to a release shall not be liable for damages from such release where the contractor is not negligent or does not engage in intentional misconduct. [42 U.S.C. §9619(a)(1), CERCLA §119(a)(1)]

Federal facilities

- The statute contains provisions for the inclusion of federally owned sites on the NPL and procedures for their cleanup. [42 U.S.C. §9620, CERCLA §120]

Cleanup standards

- Remedial actions must assure protection of human health and the environment, be as consistent with the NCP as practicable, be cost-effective, and give preference to permanent treatment. [42 U.S.C. §9621, CERCLA §121]
- Remedial actions must also attain a level of control that equals the standard required by any applicable or relevant and appropriate requirements (ARARs) of other federal or state environmental laws. [42 U.S.C. §9621(d), CERCLA §121(d)]

Settlement

- The statute establishes procedures that the government may follow in entering into settlements with PRPs. [42 U.S.C. §9622, CERCLA §122]

Brownfields

- The statute provides grants to eligible entities for the revitalization of brownfields sites. [42 U.S.C. §9604(k), CERCLA §104(k)] Eligible entities that receive grants can issue loans or grants to site owners, developers, non-profit organizations, or others for brownfields remediation. [42 U.S.C. §9604(k)(3), CERCLA §104(k)(3)] Qualified brownfields are defined as real property, the expansion, redevelopment or reuse of which may be complicated by the potential presence of hazard-

ENVIRONMENTAL STATUTES OUTLINE

ous substances. [42 U.S.C. §9601(39)(B), CERCLA §101(39)(B)]

- **Entities eligible for funding** include local governments, state governments, regional councils, redevelopment agencies, and Native American tribes. [42 U.S.C. §9604(k), CERCLA §104(k)] The statute lists the criteria for eligible state and Native American brownfields programs, including brownfields inventories, oversight authority of authorized development, public participation mechanisms, and a cleanup plan approval mechanism. [42 U.S.C. §9628(a), CERCLA §128(a)]

- The federal government may not exercise **CERCLA enforcement authority** against a brownfields redevelopment site within an eligible state or Native American program, unless the state requests, hazardous substances are migrating across state lines, a release presents an imminent and substantial endangerment to public health or welfare, or new evidence is discovered. [42 U.S.C. §9628(b), CERCLA §128(b)]

Citizen suits

- Any person may bring a **citizen suit** against alleged violators or the President. [42 U.S.C. §9659, CERCLA §310]

Toxic Substances Control Act

15 U.S.C. §§2601–2692

Testing requirements

- The EPA Administrator shall by rule require manufacturers and processors to test certain substances to develop data relevant to whether they present an **unreasonable risk of injury** to health or the environment. [15 U.S.C. §2603(a), TSCA §4(a)] The Act sets out guidelines for such rules. [15 U.S.C. §2603(b), TSCA §4(b)]
- A person may obtain an exemption from the testing requirements if the Administrator has received test data for that substance or such data is already being developed. Any person that obtains an exemption shall provide fair and equitable reimbursement, as determined by the Administrator under the Act's guidance, to those who submitted or who are preparing the test data. [15 U.S.C. §2605(c), TSCA §4(c)]
- On receiving test data or other information indicating that there may be a reasonable basis to conclude that a substance presents significant risk of serious or widespread harm to human beings from cancer, gene mutations, or birth defects, the Administrator shall initiate appropriate action, which may include requiring premanufacture or processing notices, promulgating regulations concerning the distribution and handling of the substance, or commencing a civil action to obtain the relief necessary to address an imminent hazard, as discussed below. [15 U.S.C. §2603(f), TSCA §4(f)]

Premanufacture and processing notices

- Manufacturers and processors of new substances, or substances that will be applied to significant new uses, must first **notify** the Administrator that they intend to manufacture or process the substance and submit the data from any required testing. If no testing is required, they must submit data showing that the new substance or significant new use will not present an unreasonable risk of injury to health or the environment. [15 U.S.C. §2604, TSCA §5]
- A person may obtain an exemption from the premanufacture notice requirement for small quantity generators, for chemicals that exist only temporarily as a result of the manufacture or processing of a chemical substance, at the Administrator's discretion, and for purposes of test marketing if other testing has been or is being conducted by another manufacturer or processor. Fair and equitable reimbursement of those who conducted or are conducting the testing shall be required of a person that receives a test marketing exemption. [15 U.S.C. §2604(h), TSCA §5(h)]

- Concerning substances for which information is insufficient, the Administrator may issue a proposed order to **restrict manufacture** or use pending development of further information. [15 U.S.C. §2604(e)(1)(A), TSCA §5(e)(1)(A)]

- When a manufacturer or processor files **objections** to a proposed order, the order shall not take effect. [15 U.S.C. §2604(e)(1)(C), TSCA §5(e)(1)(C)] However, the Administrator may seek a judicial injunction. [15 U.S.C. §2604(e)(2)(A)(i), TSCA §5(e)(2)(A)(i)]

Regulation of hazardous chemical substances and mixtures

- In the case of a substance that presents an unreasonable risk of injury to health or the environment, the Administrator is authorized to prohibit or limit manufacture or processing, to require certain labeling and recordkeeping by manufacturers or processors, and to regulate the use or disposal of the substance. [15 U.S.C. §2605, TSCA §6]

Imminent hazards

- In the case of an **imminently hazardous substance**, the Administrator may commence a civil action in U.S. district court for seizure of the substance and other appropriate relief, including mandatory notification, recall, and repurchase of the substance by the manufacturers, processors, or distributors. [15 U.S.C. §2606, TSCA §7]

Reporting and retention of information

- The Administrator shall promulgate rules establishing required **recordkeeping** procedures and **reporting** requirements for manufacturers and processors. [15 U.S.C. §2607(a), TSCA §8(a)]
- The Administrator shall compile, keep current, and publish a list of each chemical substance manufactured or processed in the United States. [15 U.S.C. §2607(b), TSCA §8(b)]
- Manufacturers, processors, and distributors shall maintain records of **significant adverse reactions** to health or the environment caused by their substances. [15 U.S.C. §2607(c), TSCA §8(c)]

Inspections

- The Act authorizes the Administrator's representatives to conduct limited **inspections** of premises on which chemical substances or mixtures are processed or stored and of conveyances used to transport such substances. [15 U.S.C. §2610, TSCA §11]

Exports and imports

- The Act's requirements generally do not apply to toxic substances distributed for **export** unless the Administrator determines that there will be an unreasonable risk of harm in the United States, except that a notice of intent to export shall be given to the Administrator for a chemical substance whose manufacture or processing requires submission, under the Act, of test data or a premanufacture notice. [15 U.S.C. §2611, TSCA §12]
- **Imports** are subject to the Act's requirements, and any noncomplying substance shall be refused entry into U.S. customs territory. [15 U.S.C. §2612, TSCA §13]

Enforcement

- The Act provides for **civil and criminal penalties** for violations. [15 U.S.C. §§2614, 2615, 2616(a), 2617, TSCA §§15, 16, 17(a), 19]
- Substances produced in violation of the Act may be **seized**. [15 U.S.C. §2616(b), TSCA §17(b)]
- The Administrator shall waive compliance with the Act on a request from the President that the waiver is necessary in the interest of the **national defense**. [15 U.S.C. §2621, TSCA §22]

Preemption

- Federal testing requirements for a substance generally **preempt** state testing requirements for the substance. Federal rules governing premanufacture notice and regulation of hazardous chemicals generally preempt any state regulations designed to address the same risks. [15 U.S.C. §2617, TSCA §18]

Citizen suits

- Any person may commence a **citizen suit** against alleged violators or the Administrator, subject to certain limitations. [15 U.S.C. §2619, TSCA §20]
- Any person may **petition** the Administrator for promulgation, repeal, or amendment of certain rules issued under the Act. [15 U.S.C. §2620, TSCA §21]

Asbestos hazard emergency response

- The Administrator shall promulgate **regulations** that prescribe inspection procedures to determine whether asbestos-containing material is present in **school buildings**, that define the appropriate levels of response actions, that require the implementation of maintenance and repair programs, that require periodic surveillance of school buildings where asbestos is located, and that prescribe standards for transportation and disposal of asbestos-containing material to protect human health and the environment. All of the activities are to be carried out under the authority of local educational agencies. [15 U.S.C. §2643(a)-(h), TSCA §203(a)-(h)]

- The Administrator shall promulgate regulations that require each local educational agency to develop for its school buildings an **asbestos management program**, which shall include inspection statements, plans for response actions, long-term surveillance, and use of warning labels for asbestos remaining in the buildings, among other things. [15 U.S.C. §2643(i), TSCA §203(i)] Local educational agencies that fail to comply shall be subject to **civil penalties**. [15 U.S.C. §2647(a), TSCA §207(a)]

- Any person may file a **complaint** with the governor alleging the presence of asbestos in a school building. The Administrator or the governor shall investigate and respond to any such complaint within a reasonable time. [15 U.S.C. §2647(d), TSCA §207(d)]

- Whenever there is an **imminent and substantial endangerment** and the local educational agency is not taking sufficient action, the Administrator or the governor is authorized to act to protect human health and the environment. [15 U.S.C. §2648, TSCA §208]

Indoor radon abatement

- The national long-term goal of the United States with respect to radon levels is that the air inside buildings be as free of radon as the ambient air outside of buildings. [15 U.S.C. §2661, TSCA §301]
- EPA is directed to publish an updated version of its document *A Citizen's Guide to Radon*, which shall include information on the health risks associated with exposure to radon, the cost and technical feasibility of reducing radon concentrations, the relationship between long-term and short-term testing techniques, and outdoor radon levels around the country. [15 U.S.C. §2663, TSCA §303]
- EPA shall develop **model construction standards** and techniques for controlling radon levels in new buildings. [15 U.S.C. §2664, TSCA §304]
- The federal government shall develop and implement activities to **assist state radon programs**, including, among other things, establishing a radon information clearinghouse, designing and implementing training seminars for state and local officials, and developing and demonstrating radon measurement and mitigation techniques. [15 U.S.C. §2665(a), TSCA §305(a)]
- The Administrator is authorized to make **grants** to states to assist them in developing and implementing their radon programs. [15 U.S.C. §2666, TSCA §306]
- EPA shall conduct a study to determine the **extent of radon contamination in the nation's schools**. [15 U.S.C. §2667(a), TSCA §307(a)]

Lead exposure reduction

- The Administrator shall promulgate regulations to require that individuals involved in lead-based paint activities are properly trained, that training programs are ac-

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credited, and that contractors involved in such activities are certified. [15 U.S.C. §2682, TSCA §402]

- States may obtain authorization to enforce lead-exposure reduction standards, regulations, or other requirements under the Act. [15 U.S.C. §2684, TSCA §404] Such state programs may impose more stringent requirements than the federal program. [15 U.S.C. §2684(e), TSCA §404(e)]

- The Administrator, in cooperation with other federal agencies, shall conduct a program to promote lead-exposure abatement, which shall include exposure studies, public education, establishment of a clearing-house and hotline to provide technical assistance, and es-

tablishment of testing protocols and performance characteristics to ensure that lead-based paint hazard evaluation and reduction products are effective for their intended use. [15 U.S.C. §2685, TSCA §405]

- The Administrator shall publish and revise a lead-hazard information pamphlet. [15 U.S.C. §2686, TSCA §406]

Polychlorinated biphenyls (PCBs)

- The Administrator shall prescribe methods for disposal of PCBs and require them to be labelled with adequate warnings. [15 U.S.C. §2605(e), TSCA §6(e)]

Emergency Planning and Community Right-To-Know Act 42 U.S.C. §§11001–11050

Emergency planning and notification

- The governor of each state shall appoint a **state emergency response commission**, which shall designate emergency planning districts and appoint members of a **local emergency planning committee** for each district. [42 U.S.C. §11001, EPCRA §301]
- Each local emergency planning committee shall prepare an **emergency response plan** and review it annually. [42 U.S.C. §11003(a), EPCRA §303(a)] The statute sets forth the requirements for the plan. [42 U.S.C. §11003(c), EPCRA §303(c)] The state emergency response commission shall review the plan and recommend revisions. [42 U.S.C. §11003(e), EPCRA §303(e)]
- The **owner or operator** of each facility at which extremely hazardous substances are present in excess of the established **threshold planning quantity** shall **notify** the state emergency planning commission of the presence of such substances. [42 U.S.C. §11002(c), EPCRA §302(c)] The statute sets forth the circumstances under which a facility owner or operator shall immediately notify the local emergency planning committee and state emergency planning commission of the release of a substance. [42 U.S.C. §11004(a), (b), EPCRA §304(a), (b)] The statute specifies **procedures** for emergency notification and the information that the owner or operator must provide. [42 U.S.C. §11004, EPCRA §304]

EPA list of extremely hazardous substances

- The EPA Administrator shall publish a list of **extremely hazardous substances**, and **threshold planning quantities** for each substance on the list. The Administrator may revise the list from time to time, taking into account the toxicity, reactivity, dispersability, combustibility, or flammability of the substance. [42 U.S.C. §11002(a), EPCRA §302(a)]

Material safety data sheets (MSDSs)

- Facilities required by the Occupational Safety and Health Act to prepare or possess an MSDS for a hazardous chemical shall submit an MSDS for each such chemical, or a list of such chemicals, to the local emergency planning committee, the state emergency response commission, and the fire department with jurisdiction over the facility. [42 U.S.C. §11021(a), EPCRA §311(a)] The local emergency planning committee shall make MSDSs available to the public. [42 U.S.C. §11021(c), EPCRA §311(c)]

Hazardous chemical inventory forms

- Facilities required to prepare or maintain an MSDS for a hazardous chemical shall prepare and submit an **emergency and hazardous chemical inventory form** to the appropriate local emergency planning committee, state emergency response commission, and fire department with jurisdiction over the facility. [42 U.S.C. §11022(a), EPCRA §312(a)]
- Inventory forms shall include the following **tier I information** for each category of hazardous chemicals at the facility: an estimate of the yearly maximum amount present, the average daily amount present, and the general location of hazardous chemicals in each category. [42 U.S.C. §11022(d)(1), EPCRA §312(d)(1)]
- A facility owner or operator shall provide **tier II information** if so requested by a state emergency response commission, a local emergency planning committee, or a fire department with jurisdiction over the facility. [42 U.S.C. §11022(e), EPCRA §312(e)] Tier II information includes the common name of the chemical, an estimate of the yearly maximum amount and average daily amount of the chemical present, a brief description of the manner of storage of the chemical, and an indication of whether the owner elects to withhold location information from disclosure to the public. [42 U.S.C. §11022(d)(2), EPCRA §312(d)(2)]

Toxic chemical release forms

- Facilities that have 10 or more employees and are in certain Standard Industrial Classification categories shall complete **toxic chemical release forms** for certain toxic chemicals manufactured, processed, or used in quantities exceeding the toxic chemical threshold quantity during the preceding calendar year. [42 U.S.C. §11023(a), (c), EPCRA §313(a), (c)]

Trade secrets

- Facilities may, under certain circumstances, withhold information otherwise subject to reporting requirements on showing that the information constitutes a **trade secret**. Any person may **petition** the EPA Administrator for the disclosure of the specific chemical identity of any chemical claimed as a trade secret. [42 U.S.C. §11042, EPCRA §322]
- In a **medical emergency** or on a **written statement of need**, **health professionals** may obtain the **specific chemical identity** of chemicals claimed as trade secrets. [42 U.S.C. §11043(a), (b), EPCRA §323(a), (b)] Health professionals obtaining information in this way must

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agree not to use the information for any purpose other than the health needs asserted in the statement of need. [42 U.S.C. §11043(d), EPCRA §323(d)]

Enforcement

- The statute provides for civil, administrative, and criminal penalties for violations of various provisions. [42 U.S.C. §11045, EPCRA §325]

- The statute authorizes **any person** to commence a civil action against facility owners and operators, the EPA Administrator, a state governor, or a state emergency response commission for specific types of violations. [42 U.S.C. §11046(a)(1), EPCRA §326(a)(1)] State and local governments may also initiate civil actions against facility owners and operators for failures to comply with various requirements of the statute. [42 U.S.C. §11046(a)(2), EPCRA §326(a)(2)]

Federal Insecticide, Fungicide, and Rodenticide Act

7 U.S.C. §§136-136y

Registration of pesticides

- No person may distribute or sell a pesticide unless, subject to certain exceptions, it is first **registered** with the Administrator of EPA. [7 U.S.C. §136a(a), FIFRA §3(a)]
- The statute establishes the necessary steps for registration, including submission to EPA of a statement containing information such as the name of the applicant, the name of the pesticide, the label for the pesticide and directions for its use, the formula of the pesticide, and the use for which it is to be classified. [7 U.S.C. §136a(c)(1), FIFRA §3(c)(1)]
- The Administrator may allow minor use crop pesticides to remain on the market while required data is gathered, or the Administrator may waive data requirements for minor crop pesticides that meet certain use or risk requirements. [7 U.S.C. §136a(c)(2)(B), FIFRA §3(c)(2)(B)]
- The Administrator shall expedite review and registration of minor use pesticides by completing review within 12 months of a final application. [7 U.S.C. §136a(c)(3)(C), FIFRA §3(c)(3)(C)]
- The Administrator shall expedite the review of pesticides used to mitigate or protect against microbiological organisms. [7 U.S.C. §136a(h), FIFRA §3(h)]
- The Administrator shall publish guidelines specifying the kinds of information that will be required to support the registration of a pesticide. [7 U.S.C. §136a(c)(2), FIFRA §3(c)(2)]
- The requirements for registration include proper **labeling** and an absence of **unreasonable adverse effects** on the environment when the pesticide is used in accordance with commonly recognized practice. [7 U.S.C. §136a(c)(5), FIFRA §3(c)(5)]
- Under certain special circumstances, the Administrator may conditionally register or amend the registration of a pesticide. [7 U.S.C. §136a(c)(7), FIFRA §3(c)(7)]
- A pesticide will receive **expedited review** of registration if use of the pesticide may reasonably be expected to accomplish one or more of the following: reduction of the risks pesticides pose to human health; reduction of the risks pesticides pose to nontarget organisms; reduction of the potential for contamination of groundwater, surface water, or other valued environmental resources; or increased adoption of integrated pest management strategies. [7 U.S.C. §136a(c)(10), FIFRA §3(c)(10)]
- As part of the registration of a pesticide the Administrator shall **classify** it as being for general use, restricted use, or both. A classification of restricted use is necessary when the pesticide requires additional regulatory restrictions to avoid unreasonable adverse effects on the environment, including injury to the applicator. [7 U.S.C. §136a(d)(1), FIFRA §3(d)(1)]
- The Administrator shall establish a procedure for the **periodic review** of the registration of pesticides. [7 U.S.C. §136a-1(g), FIFRA §4(g)]
- The Administrator shall **reregister**, according to a schedule established under the statute, each registered pesticide containing an active ingredient first registered before November 1, 1984. [7 U.S.C. §136a-1(a), FIFRA §4(a)]
- The Administrator may extend the deadline for the production of reregistration data for minor use pesticides. [7 U.S.C. §136a-1, FIFRA §4]
- The statute authorizes EPA to charge **fees for reregistration**, but the Administrator may exempt public health pesticides from reregistration fees. [7 U.S.C. §136a-1(i), FIFRA §4(i)]

Experimental use permits

- The Administrator may issue an **experimental use permit** if the applicant needs a permit in order to accumulate information necessary to register a permit for general or restricted use. [7 U.S.C. §136c(a), FIFRA §5(a)]
- The Administrator (or an authorized state) may prescribe terms and conditions for the use of a pesticide under an experimental use permit. [7 U.S.C. §136c(c) & (f), FIFRA §5(c) & (f)]

Cancellation and suspension of permits

- The Administrator may permit the continued sale and use of the existing stock of a pesticide with a suspended or canceled registration if the Administrator determines that such use or sale is not inconsistent with the purposes of FIFRA. [7 U.S.C. §136d(a)(1), FIFRA §6(a)(1)]
- If at any time after registration the registrant has additional information concerning the pesticide's unreasonable adverse effects on the environment, the registrant must submit such information to the Administrator. [7 U.S.C. §136d(a)(2), FIFRA §6(a)(2)]
- The Administrator may also cancel or change a pesticide's registration if it appears that it violates the statute or generally causes unreasonable adverse effects on the environment when used in accordance with commonly required practice. [7 U.S.C. §136d(b), FIFRA §6(b)]

- No order of suspension may be issued unless the Administrator has issued, or at the same time issues, a notice of intention to cancel the registration or change the classification of the pesticide. An emergency order may be issued and registration may be suspended immediately without a notice of intention to cancel or change the classification of the pesticide if the Administrator determines that suspension is necessary to prevent an imminent hazard to human health. If no notice of intention to cancel the registration or change the classification is issued within 90 days, the emergency order expires. The registrant shall have an opportunity for expedited Agency hearing on the question of whether an imminent hazard exists. [7 U.S.C. §136d(c), FIFRA §6(c)]

Registration of establishments

- No person shall produce a pesticide unless the establishment in which it is produced is registered with the Administrator. [7 U.S.C. §136e(a), FIFRA §7(a)]
- A producer operating a registered establishment shall provide the Administrator with certain information about the pesticides produced by the establishment. [7 U.S.C. §136e(c), FIFRA §7(c)]

Certification of applicators

- Restricted use pesticides may require application by a **certified applicator**. The statute provides for the procedures by which applicators may be certified and authorizes the operation of state certification plans. [7 U.S.C. §136i, FIFRA §11]

Inspection and enforcement

- The Administrator may prescribe regulations requiring producers to maintain records of their operations. [7 U.S.C. §136f(a), FIFRA §8(a)]
- Producers, carriers, and sellers of pesticides shall, on EPA's request, furnish access to certain records and information concerning the pesticides that they handle. [7 U.S.C. §136f(b), FIFRA §8(b)]
- The statute authorizes entry and inspection of establishments under certain circumstances. [7 U.S.C. §136g(a), FIFRA §9(a)]
- The statute authorizes the Administrator to issue "stop sale, use, or removal" orders or seize pesticides under certain circumstances. [7 U.S.C. §136g(b), FIFRA §9(b)]

- The statute provides for **civil and criminal penalties** for certain violations. [7 U.S.C. §136l, FIFRA §14]

Indemnities

- The Administrator shall under limited circumstances **indemnify** a registrant or owner of a pesticide where the pesticide's registration has been suspended or cancelled. [7 U.S.C. §136m, FIFRA §15]

Imports and exports

- Pesticides intended solely for **export** are exempt from many of the requirements of the statute, including registration (where the foreign purchaser has signed a statement acknowledging that he understands that the pesticide is not registered), but producers are still subject to registration of establishments. [7 U.S.C. §136o(a), FIFRA §17(a)]
- Pesticides **imported** from foreign countries may be refused admission following inspection by EPA. [7 U.S.C. §136o(c), FIFRA §17(c)]

Authority of states

- A state may regulate the sale or use of any federally registered pesticide only to the extent that the regulation does not permit any sale or use prohibited by FIFRA. [7 U.S.C. §136v(a), FIFRA §24(a)]
- A state may not impose any labeling or packaging requirements different from those required under FIFRA. [7 U.S.C. §136v(b), FIFRA §24(b)]
- A state may provide registration for additional uses of federally registered pesticides formulated for distribution and use within the state to meet special local needs in accord with the purposes of FIFRA, and if registration for such use has not been denied or canceled by the Administrator. [7 U.S.C. §136v(c)(1), FIFRA §24(c)(1)]
- A state may have primary enforcement responsibility for pesticide use violations where the state has entered into an enforcement cooperative agreement with the Administrator, or where the Administrator determines that the state has adequate laws, regulations, and enforcement procedures. [7 U.S.C. §§136u(a) & 136w-1(a), FIFRA §§23(a) & 26(a)]
- Each state may establish minimum requirements for the training of maintenance applicators and service technicians. [7 U.S.C. §136w-6, FIFRA §31]

Oil Pollution Act

33 U.S.C. §§2701–2761

Liability

- Each party responsible for a vessel or facility from which oil is discharged, or which poses a substantial threat of an oil discharge, into or on navigable waters, adjoining shorelines, or the exclusive economic zone, is liable for removal costs and damages specified under the OPA. [33 U.S.C. §2702(a), OPA §1002(a)] OPA §1001(32) (33 U.S.C. §2701(32)) defines “responsible party.” OPA §1002(b)(1) (33 U.S.C. §2702(b)(1)) defines “removal costs.” Recoverable damages include natural resource damages (recoverable by trustees); damages to real and personal property (recoverable by the property owner or lessee); loss of subsistence use of natural resources (recoverable by subsistence users); loss of tax and other revenues and increased costs of public services (recoverable by federal, state, and local governments); and loss of profits or earning capacity (recoverable by any claimant). [33 U.S.C. §2702(b)(2), OPA §1002(b)(2)] OPA §1009 (33 U.S.C. §2709) provides for contribution actions.

- **Defenses to liability** include acts of God; acts of war; and acts or omissions of third parties. [33 U.S.C. §2703(a), OPA §1003(a)]

- **Discharges excluded from liability** include discharges allowed by federal, state, or local permits; discharges from public vessels; and discharges from onshore facilities subject to the Trans-Alaska Pipeline Authorization Act. [33 U.S.C. §2702(c), OPA §1002(c)]

- **Limitations on liability** include: (for tank vessels) the greater of \$1,200 per gross ton or \$10 million if the vessel exceeds 3,000 gross tons, or \$2 million if the vessel is less than 3,000 gross tons; (for nontank vessels) the greater of \$600 per gross ton or \$500,000; (for offshore facilities) all removal costs plus \$75 million; and (for onshore facilities and deepwater ports) \$350 million. [33 U.S.C. §2704(a), OPA §1004(a)] The owners or operators of offshore Outer Continental Shelf facilities, or vessels carrying oil as cargo from such facilities, may be liable for all government removal costs resulting from a discharge or substantial threat of a discharge from such facilities or vessels. [33 U.S.C. §2704(c)(3), OPA §1004(c)(3)] Liability limitations do not apply if the discharge was proximately caused by the responsible party’s gross negligence or willful misconduct, or by a violation of applicable federal safety, construction, or operating regulations. Liability limitations do not apply if the responsible party does not report the incident as required by law, to cooperate with responsible officials, or to comply with an administrative or judicial order issued under Federal Water Pollution Control Act (FWPCA) §311(c) or (e) (33 U.S.C. §1321(c)

or (e)) or the Intervention on the High Seas Act. [33 U.S.C. §2704(c), OPA §1004(c)]

Statute of limitations

- Damage claims must be filed within three years after a loss is reasonably discoverable or (for natural resource damage claims) within three years of a natural resource damage assessment. [33 U.S.C. §2717(f), OPA §1017(f)]

Oil Spill Liability Trust Fund

- The Fund may be used to pay federal and state government removal costs; natural resource trustees’ damage assessment and restoration plan implementation costs; removal costs and natural resource damages resulting from oil discharges from foreign offshore facilities; uncompensated removal costs and damages; and federal administrative, operational, and personnel costs of implementing, administering, and enforcing the OPA (subject to specified dollar limits). All such amounts (except the federal administrative, operational, and personnel costs) must be consistent with the national contingency plan. [33 U.S.C. §2712(a), OPA §1012(a)] OPA §1013 (33 U.S.C. §2713) sets forth procedures for claims against the Fund.

Financial responsibility

- OPA §1016 (33 U.S.C. §2716) sets forth financial responsibility requirements for parties responsible for offshore facilities, deepwater ports, vessels over 300 gross tons using any place subject to U.S. jurisdiction, and vessels using the exclusive economic zone to lighter or transship oil destined for a place subject to U.S. jurisdiction.

Removal actions

- OPA §4201 (amending FWPCA §311, 33 U.S.C. §1321) requires the President to ensure the effective and immediate removal of oil discharges, and the mitigation or prevention of substantial threats of oil discharges.

Penalties

- OPA §4301 (amending FWPCA §311, 33 U.S.C. §1321) sets forth **administrative and civil penalties**. OPA §4302 (amending 46 U.S.C. §2302) sets forth **criminal penalties**.

Contingency planning, licensing, construction, and operation requirements

- Title IV (amending 33 U.S.C. and 46 U.S.C.) sets forth **merchant mariner licensing and vessel construction and operation requirements**. OPA §4202 (amending FWPCA §311, 33 U.S.C. §1321) provides for national response units, U.S. Coast Guard strike teams and district response groups, area committees, area contingency plans, and vessel and facility **response plans**.

WATER QUALITY

Federal Water Pollution Control Act (the "Clean Water Act") 33 U.S.C. §§1251-1387

Purpose

- The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. [33 U.S.C. §1251(a), FWPCA §101(a)]

Technology-based effluent limitations

- Except as permitted by the Act, the discharge of any pollutant by any person is unlawful. [33 U.S.C. §1311(a), FWPCA §301(a)]
- Effluent limitations from point sources (other than publicly owned treatment works (POTWs)) shall require the application of the best practicable control technology (BPT). If any such source discharges into a POTW, the source must satisfy the applicable pretreatment requirements and requirements concerning toxic pollutants. [33 U.S.C. §1311(b)(1)(A), FWPCA §301(b)(1)(A)]
- POTWs must comply with effluent limitations based on secondary treatment or comply with any stricter limitation required by water quality standards, treatment standards, or schedules of compliance under state or federal law, or any other federal law or regulation, or any limitation required to implement any applicable water quality standard. [33 U.S.C. §1311(b)(1)(B), (C), FWPCA §301(b)(1)(B), (C)]
- Point sources of toxic and nonconventional pollutants must comply with effluent limitations requiring the best available technology economically achievable (BAT). Nonconventional pollutants are those pollutants that are not toxic or conventional. [33 U.S.C. §1311(b)(2), FWPCA §301(b)(2)]
- Point sources of conventional pollutants (e.g., biological oxygen demand, suspended solids, fecal coliform, pH) shall apply the best conventional pollutant control technology (BCT). [33 U.S.C. §1311(b)(2)(E), FWPCA §301(b)(2)(E)]
- The Act establishes the circumstances under which the Administrator may modify the requirements of effluent limitations with respect to particular sources. [33 U.S.C. §1311(g), FWPCA §301(g)]
- It is unlawful to discharge into navigable waters any radiological, chemical, or biological warfare agent; high-level radioactive waste; or medical waste. [33 U.S.C. §1311(f), FWPCA §301(f)]

Water quality-related effluent limitations

- If, after the application of technology-based effluent limitations, the effluent from a single point source or group of point sources would interfere with the attainment or maintenance of water quality in navigable waters that affect the public health, relate to public water supplies and industrial and agricultural uses, and support wildlife and recreation, the Administrator shall establish water quality effluent limitations for such sources. [33 U.S.C. §1312(a), FWPCA §302(a)]
- The Administrator may modify the requirements of water quality-related effluent limitations under certain circumstances. [33 U.S.C. §1312(b), FWPCA §302(b)]

Water quality standard and implementation plans

- State water quality standards for intrastate and interstate waters adopted before 1972 remain in effect. States that had not adopted intrastate water quality standards by 1972 are required to adopt such standards. [33 U.S.C. §1313(a), FWPCA §303(a)]
- The Act establishes the procedures by which new water quality standards shall be issued and existing ones reviewed and modified. New and revised standards shall protect the public health and welfare, enhance the quality of water, and serve the Act's purposes. [33 U.S.C. §1313(c), FWPCA §303(c)]
- Each state must identify those waters for which the effluent limitations established under the Act are not stringent enough to implement any water quality standard applicable to such waters. A state must then establish the total maximum daily load of pollutants that such waters can receive. [33 U.S.C. §1313(d), FWPCA §303(d)]
- Each state is required to have a continuing planning process that will result in plans for all navigable waters within the state. These plans shall include effluent limitations at least as stringent as those required under the Act and at least as stringent as those required by applicable water quality standards. They shall also incorporate areawide waste treatment management plans and total maximum daily loads. [33 U.S.C. §1313(e), FWPCA §303(e)]

Coastal Water Quality

- States having coastal waters must adopt and submit to EPA water quality criteria and standards for coastal rec-

recreation waters for EPA-identified pathogens and pathogen indicators. [33 U.S.C. §1313(I)(1), FWPCA §303(I)(1)] If a coastal state fails to adopt water quality criteria and standards protective of human health, EPA shall propose regulations for the states. [33 U.S.C. §1313(I)(2), FWPCA §303(I)(2)] By 2005, EPA must issue new or revised water quality criteria for pathogens and pathogen indicators in coastal recreation waters. [33 U.S.C. §1314(a)(9), FWPCA §304(a)(9)]

- EPA may make grants to state and local governments to implement programs for monitoring coastal recreation waters and notifying the public. [33 U.S.C. §1346, FWPCA §406] The statute lists the requirements and limitations for such grants and the state and local programs utilizing the funds. [33 U.S.C. §1346, FWPCA §406]] By 2003, each federal agency that has jurisdiction over coastal recreation waters must develop and implement a monitoring and notification program that protects the public health. [33 U.S.C. §1346(d), FWPCA §406(d)]

- **Coastal recreation waters** are defined as the waters of the Great Lakes and marine coastal waters that a state designates for use for swimming, bathing, surfing, or similar water contact activities. [33 U.S.C. §1362(21), FWPCA §502(21)]

New source performance standards

- The Administrator shall propose and publish regulations establishing federal standards of performance for **new sources**. [33 U.S.C. §1316(b)(1)(B), FWPCA §306(b)(1)(B)]

- In establishing or revising new source performance standards, the Administrator shall take into consideration the cost of achieving the effluent reduction, and any nonwater quality environmental impact and energy requirements. [33 U.S.C. §1316(b)(1)(B), FWPCA §306(b)(1)(B)]

Toxic and pretreatment effluent standards

- The Administrator shall identify **toxic pollutants** for which the application of BAT is required. The Administrator shall take into consideration a pollutant's toxicity, persistence, and degradability; the presence and importance of affected organisms; and the nature of the pollutant's effects on such organisms. [33 U.S.C. §1317(a), FWPCA §307(a)]

- The Administrator may establish an effluent standard imposing additional requirements on dischargers of a toxic pollutant. [33 U.S.C. §1317(a), FWPCA §307(a)]

- The Administrator shall promulgate **pretreatment standards** for the introduction of pollutants into POTWs for those pollutants not susceptible to treatment by the POTWs or those that would interfere with the operation of such treatment works. [33 U.S.C. §1317(b), FWPCA §307(b)]

Inspections, monitoring, and entry

- The Administrator shall require owners or operators of point sources to maintain **records and monitoring** to the extent necessary to carry out the Act's objective. [33 U.S.C. §1318(a), FWPCA §308(a)]

- The Administrator or the Administrator's representatives shall have the right to enter the premises of point sources to **inspect** their recordkeeping and sample their effluent. [33 U.S.C. §1318(a)(B)(i)-(ii), FWPCA §308(a)(B)(i)-(ii)]

Oil and hazardous substance liability

- It is the policy of the United States that there should be no discharges of **oil or hazardous substances** into navigable or territorial waters. [33 U.S.C. §1321(b)(1), FWPCA §311(b)(1)]

- The Administrator shall develop a list of hazardous substances other than oil that present an **imminent and substantial danger** to the public health or welfare. [33 U.S.C. §1321(b)(2), FWPCA §311(b)(2)]

- The discharge of such hazardous substances in quantities determined by the President to be harmful is generally prohibited. [33 U.S.C. §1321(b)(3), FWPCA §311(b)(3)]

- Any person in charge of a vessel or facility must, as soon as that person has knowledge of any lawful discharge of oil or hazardous substance, **notify** the federal government. Failure to notify is a criminal offense. [33 U.S.C. §1321(b)(5), FWPCA §311(b)(5)]

- Owners or operators of vessels and facilities shall be assessed **civil penalties** for unlawful discharges. [33 U.S.C. §1321(b)(7)(A), FWPCA §311(b)(7)(A)]

- The President is authorized to undertake **removal** of oil and hazardous substances that have been discharged. [33 U.S.C. §1321(c)(1), FWPCA §311(c)(1)]

- The President shall prepare a **national contingency plan** (NCP) to provide for efficient, coordinated, and effective action to minimize damage from such discharges. These actions include containment, removal, and dispersal. [33 U.S.C. §1321(d), FWPCA §311(d)]

- Owners and operators of vessels that unlawfully discharge oil or hazardous substances shall be liable to the federal government for the costs of removal and of restoring damaged **natural resources**. The Act establishes certain affirmative defenses to liability. [33 U.S.C. §1321(f), FWPCA §311(f)]

- The Act establishes ceilings for owner and operator liability, but liability for willful negligence or willful misconduct is unlimited. [33 U.S.C. §1321(f), FWPCA §311(f)]

Nonpoint source management programs

- Each state shall prepare a report identifying waters that cannot reasonably be expected to comply with applicable water quality standards without additional control of **nonpoint sources** of pollution, and categories of nonpoint sources that significantly contribute to pollution in those waters. [33 U.S.C. §1329(a)(1), FWPCA §319(a)(1)]
- Each state shall submit a **management program** for the control of nonpoint source pollution that includes an identification of the best management practices that will be used to reduce pollution, an identification of programs (e.g., programs for enforcement, technical assistance, financial assistance, education, demonstration projects) to be used to achieve implementation of such practices, and a timetable for implementation. [33 U.S.C. §1329(b), FWPCA §319(b)]
- The Act establishes the procedures by which the Administrator may approve or disapprove such programs. [33 U.S.C. §1329(d), FWPCA §319(d)]

Certification

- Any applicant for a federal license or permit to conduct an activity that may result in discharge into navigable waters shall first obtain **certification** from the state that the discharge will comply with the applicable effluent limitations, water quality standards, new source performance standards, and toxic and pretreatment requirements. [33 U.S.C. §1341(a), FWPCA §401(a)]

National pollutant discharge elimination system (NPDES) permits

- The Administrator is authorized to issue permits for the discharge of any pollutant or combination of pollutants on the condition that the discharge will meet the applicable requirements and standards of the Act. [33 U.S.C. §1342(a)(1), FWPCA §402(a)(1)]
- States desiring to administer their own permit programs may submit such programs to the Administrator for approval. The Act establishes the procedures and conditions under which the Administrator shall approve or disapprove such programs. [33 U.S.C. §1342(b), FWPCA §402(b)]
- Where the Administrator approves a **state permit program**, the Administrator shall suspend EPA's issuance of permits as to discharges subject to the program. [33 U.S.C. §1342(c)(1), FWPCA §402(c)(1)]

Permits for dredged or fill material

- The Army Corps of Engineers may issue permits (**§404** [33 U.S.C. §1344] permits) to control the discharge of **dredged or fill material** into navigable waters at specified sites. [33 U.S.C. §1344(a), FWPCA §404(a)]

- A disposal site is to be designated for each permit according to guidelines jointly developed by the Corps and the Administrator. [33 U.S.C. §1344(b), FWPCA §404(b)]
- The Administrator is authorized to **veto** the specification of a particular area as a disposal site whenever the Administrator determines that the discharge of dredged or fill materials in the area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas. [33 U.S.C. §1344(c), FWPCA §404(c)]
- The Act authorizes the Corps to issue **general permits** on a state, regional, or nationwide basis for any category of activities that will cause only minimal environmental effects when performed separately, and will have only minimal adverse cumulative effects on the environment. General permits are limited to a maximum of five years. [33 U.S.C. §1344(e), FWPCA §404(e)]
- States wishing to administer their own dredge and fill permit programs may submit proposed programs to the Administrator for approval. The Act establishes the procedures and conditions under which the Administrator shall approve or disapprove such programs. [33 U.S.C. §1344(g), (h), FWPCA §404(g), (h)]
- Where a state permit program is approved, the Corps shall suspend its own issuance of permits for activities covered under the program. [33 U.S.C. §1344(h)(5), FWPCA §404(h)(5)]

Federal enforcement

- Whenever a source violates a condition or limitation in its **NPDES permit** or **dredge and fill permit**, the Administrator shall either (1) notify the alleged violator and the state, and issue a compliance order or bring a civil action if beyond the 30th day the state has not commenced an appropriate action; or (2) issue a compliance order or bring a civil action. [33 U.S.C. §1319(a), FWPCA §309(a)]
- The Act authorizes the assessment of **judicial civil and criminal penalties**, as well as **administrative civil penalties**, against violators. [33 U.S.C. §1319(c), (d), (g), FWPCA §309(c), (d), (g)]

General provisions

- Where the Administrator receives notice that a pollution source is presenting an **imminent and substantial endangerment** to human health or livelihood, the Administrator may sue for immediate restraint of anyone causing or contributing to the pollution, or take any other action necessary. [33 U.S.C. §1364(a), FWPCA §504(a)]
- Any person may bring a **citizen suit** against alleged violators or the Administrator. [33 U.S.C. §1365(a), FWPCA §505(a)]

- The Act establishes certain procedural and jurisdictional rules pertaining to administrative proceedings and judicial review. [33 U.S.C. §1369, FWPCA §509]
- States may not adopt any effluent limitations or other limitation, effluent standards, prohibition, pretreatment standard, or standard or performance that is less stringent than that provided under the Act. [33 U.S.C. §1370, FWPCA §510]

Federal facilities

- Federal facilities shall comply with all federal, state, interstate, and local laws respecting the control and abatement of water pollution, although the President may grant exemptions. [33 U.S.C. §1323, FWPCA §313]

Grants for construction of treatment works

- The Administrator of EPA shall encourage recycling of potential sewage pollutants, confined and contained disposal of pollutants not recycled, reclamation of wastewater, and ultimate disposal of sewage sludge in a manner that will not result in environmental hazards. [33 U.S.C. §1281(d), FWPCA §201(d)]
- The Administrator is authorized to make grants to states and municipalities for the construction of POTWs. [33 U.S.C. §1281(g), FWPCA §201(g)]
- The Act establishes the procedural and technological requirements for the issuance of grants for POTWs. [33 U.S.C. §1281(g), FWPCA §201(g)]
- Before approving a grant for a POTW, the Administrator shall determine that any required areawide waste treatment management plan exists or is being developed and includes the proposed treatment works; that any required state implementation plan for water quality standards exists or is being developed and the proposed treatment works will be in conformity with the plan; that the proposed POTW has priority construction status under the applicable state implementation plan; that the applicant has shown that the facility can be operated properly and efficiently; that the capacity of the proposed facility directly relates to the needs of the area it will serve; and that the specification for bids for the POTW does not contain proprietary or exclusionary standards other than those related to performance. [33 U.S.C. §1284(a), FWPCA §204(a)]
- For each area identified by the Administrator to have **substantial water quality control problems**, the state governor must designate a representative organization to develop an **effective areawide waste treatment plan** (§208 [33 U.S.C. §1288] plan) that will assess the future waste treatment needs of the area, identify the treatment works necessary to meet those needs, set up a regulatory program to control the location and construction of facilities that may produce discharge and to assure compliance with applicable pretreatment requirements, identify and control nonpoint sources of pollution, and control uses of dredged and fill material that adversely affect navigable waters. [33 U.S.C. §1288(b), FWPCA §208(b)]
- Waste treatment management plans and practices shall provide for the application of the **best practicable waste treatment technology** before any discharge into receiving waters and shall provide for consideration of advanced waste treatment techniques. [33 U.S.C. §1281(b), FWPCA §201(b)]
- To the extent practicable, waste treatment management shall be on an **areawide basis** and address both **point and nonpoint** sources of pollution. [33 U.S.C. §1281(c), FWPCA §201(c)]

Safe Drinking Water Act

42 U.S.C. §§300f-300j-26

Public water systems (PWS)

- The Administrator of EPA shall publish **maximum contaminant level goals (MCLGs)** and promulgate **national primary drinking water regulations (NPDWRs)** for certain designated contaminants that may have an adverse effect on health, are likely to occur in the PWS, and the regulation of which presents a meaningful opportunity to reduce health risks. [42 U.S.C. §300g-1(b)(1)(A), SDWA §1412(b)(1)(A)]
- Each MCLG shall be at the level at which there are no known or anticipated adverse effects on the health of persons and that allows an adequate margin of safety. [42 U.S.C. §300g-1(b)(4)(A), SDWA §1412(b)(4)(A)]
- Each NPDWR shall specify a **maximum contaminant level (MCL)** that is as close as feasible to the MCLG. [42 U.S.C. §300g-1(b)(4)(B), SDWA §1412(b)(4)(B)] "Feasible" means with the use of the best technology, treatment techniques, and other means that the Administrator finds are available, taking cost into consideration. [42 U.S.C. §300g-1(b)(4)(D), SDWA §1412(b)(4)(D)]
- A maximum contaminant level may be established at a level other than the feasible level if the technology and treatment techniques used to determine the feasible level would create a health risk by increasing the concentration of other contaminants in drinking water or by interfering with other NPDWRs' drinking water treatment techniques. [42 U.S.C. §300g-1(b)(5), SDWA §1412(b)(5)]
- When proposing an NPDWR that includes an MCL, the Administrator is required to analyze the **risk-reduction costs and benefits** associated with the proposed drinking water standard to determine whether the benefits justify the costs. [42 U.S.C. §300g-1(b)(3)(C), SDWA §1412(b)(3)(C)]
- Each NPDWR shall list the technology, treatment techniques, and other means that the Administrator finds are **feasible** to meet the maximum contaminant level, but shall not require the use of any particular technology or treatment technique. [42 U.S.C. §300g-1(b)(4)(E), SDWA §1412(b)(4)(E)]
- The Administrator may promulgate an NPDWR that requires the use of a treatment technique in lieu of setting an MCL if the Administrator finds that it is not economically or technologically feasible to ascertain the level of the contaminant. [42 U.S.C. §300g-1(b)(7)(A), SDWA §1412(b)(7)(A)]
- The Administrator shall promulgate NPDWRs specifying under what criteria filtration and disinfection are required as treatment techniques for PWS. [42 U.S.C. §300g-1(b)(7), (8), SDWA §1412(b)(7), (8)]
- The Administrator shall publish a **list of contaminants not subject to an NPDWR** that are known or anticipated to occur in the PWS and may require regulation due to public health concerns. [42 U.S.C. §300g-1(b)(1)(B) & (C), SDWA §1412(b)(1)(B) & (C)] Every five years, the Administrator will determine if any of the listed contaminants require regulation. [42 U.S.C. §300g-1(b)(1)(B), SDWA §1412(b)(1)(B)]
- The Administrator shall promulgate **national secondary drinking water regulations** specifying the MCLs requisite to protecting the **public welfare**. [42 U.S.C. §300g-1(c), SDWA §1412(c)]
- A state has **primary enforcement responsibility** for PWS where the Administrator determines that the state has adopted drinking water regulations that are no less stringent than the NPDWRs, that the state has adequate enforcement and recordkeeping mechanisms, that any state provisions for variances and exemptions conform to the requirements of the Act, and that the state has an adequate emergency drinking water plan. [42 U.S.C. §300g-2(a), SDWA §1413(a)]
- Where a state has primary enforcement responsibility, the Administrator shall enforce NPDWRs and compliance schedules against a violator if the state has not commenced an enforcement action beyond 30 days after receiving notice of the violation from the Administrator. In such a case, the Administrator shall issue a compliance order or commence a civil suit against the violator. [42 U.S.C. §300g-3(a)(1), SDWA §1414(a)(1)]
- Where the Administrator has primary enforcement responsibility and finds that a PWS is violating an NPDWR or compliance schedule, the Administrator shall issue a **compliance order** or commence a **civil suit** against the violator. [42 U.S.C. §300g-3(a)(2)(A), SDWA §1414(a)(2)(A)]
- The Act authorizes courts to issue **injunctions** and assess **civil penalties** against violators. [42 U.S.C. §300g-3(b), SDWA §1414(b)]
- A PWS must notify its customers of any failure to comply with an applicable MCL, the failure to perform required monitoring, the existence of a variance exemption, or the failure to comply with an exemption. [42 U.S.C. §300g-3(c), SDWA §1414(c)] A PWS must provide each customer with an **annual report** on the quality of the PWS' water including information on violations and con-

taminants in the water. [42 U.S.C. §300g-3(c)(4), SDWA §1414(c)(4)]

- **Variances** may be granted to PWS that have implemented the best available technology or treatment techniques but cannot meet the applicable MCL requirements because of characteristics of the reasonably available raw water sources. Such a variance may not be granted if it would result in an unreasonable risk to human health. [42 U.S.C. §300g-4(a)(1)(A), SDWA §1415(a)(1)(A)]
- States exercising primary enforcement may grant an MCL or treatment technique **small system variance** to PWS that serve 3,300 or fewer people. [42 U.S.C. §300g-4(e), SDWA §1415(e)] The Administrator of EPA can issue a small system variance to a PWS serving fewer than 10,000 people. [42 U.S.C. §300g-4(e), SDWA §1415(e)] A small system variance is available where variance technology exists and a PWS cannot afford to comply with an NPDWR. [42 U.S.C. §§300g-4(e), 300g-1(b)(15), SDWA §§1415(e) and 1412(b)(15)]
- A variance may also be granted from a regulation requiring implementation of a specified treatment technique where a PWS demonstrates that the technique is not necessary to protect human health because of the nature of the raw water source of the system. [42 U.S.C. §300g-4(a)(1)(B), SDWA §1415(a)(1)(B)]
- The Act establishes the circumstances under which **exemptions** from the requirements of NPDWRs may be granted. [42 U.S.C. §300g-5, SDWA §1416]
- PWS receiving assistance from the state revolving fund must have **trained and certified PWS operators**. [42 U.S.C. §300g-8, SDWA §1419]
- Any pipe, solder, or flux used after June 19, 1986, in the installation or repair of any PWS or of any plumbing providing water for human consumption that is connected to a PWS shall be free from lead. [42 U.S.C. §300g-6(a)(1), SDWA §1417(a)(1)]

Protection of underground sources of drinking water

- The Administrator shall promulgate regulations for state **underground injection control (UIC)** programs. [42 U.S.C. §300h(a)(1), SDWA §1421(a)(1)]
- Such regulations shall contain minimum requirements for effective programs to prevent underground injection that endangers drinking water sources, including requirements for a permit system for underground injection. [42 U.S.C. §300h(b)(1), SDWA §1421(b)(1)]
- The Administrator shall list each state for which a state UIC program may be necessary to assure that underground injection will not endanger drinking water sources. UIC programs for listed states must be approved by the Administrator. Where a listed state does not establish a satisfactory program, the Administrator must de-

velop a program for the state. [42 U.S.C. §300h-1, SDWA §1422]

- If the Administrator approves a state's UIC program, the **state** shall have primary enforcement responsibility. [42 U.S.C. §300h-1(b)(3), SDWA §1422(b)(3)] Where a state has **primary enforcement responsibility**, the Administrator shall enforce UIC regulations against a violator where the state has not commenced an appropriate action 30 days after receiving notice of the violation from the Administrator. In such a case, the Administrator shall issue a compliance order or commence a civil suit against the violator. [42 U.S.C. §300h-2(a)(1), SDWA §1423(a)(1)]
- Where the Administrator has primary enforcement responsibility and finds that a UIC requirement is being violated, the Administrator shall either issue a compliance order or commence a civil action against the violator. [42 U.S.C. §300h-2(a)(2), SDWA §1423(a)(2)] The Administrator may also assess administrative penalties. [42 U.S.C. §300h-2(c)(1), SDWA §1423(c)(1)]
- The Act authorizes courts to issue **injunctions** or assess **civil penalties** against violators of UIC requirements. [42 U.S.C. §300h-2(b), SDWA §1423(b)]

State wellhead protection programs

- States are to establish programs to protect **wellhead** areas (the surface and subsurface areas surrounding water wells or wellfields supplying a PWS) from contamination that may have an adverse effect on human health. The Act establishes the minimum requirements of such programs and authorizes federal assistance for their development and implementation. [42 U.S.C. §300h-7(a), (d), (e), SDWA §1428(a), (d), (e)]

Emergency powers

- Where the Administrator receives information that a contaminant of a PWS or underground water source may present an **imminent and substantial endangerment** to human health and that appropriate state and local authorities have not acted to protect human health, the Administrator may take whatever action the Administrator deems necessary. [42 U.S.C. §300i(a), SDWA §1431(a)]

General provisions

- Suppliers of water and others subject to the requirements of the Act may be required by the Administrator to maintain records and conduct **monitoring**, and shall be required to conduct monitoring of unregulated contaminants. [42 U.S.C. §300j-4(a)(1), SDWA §1445(a)(1)]
- The Administrator or the Administrator's representatives may under certain circumstances enter and **inspect** the facility of any person subject to the requirements of this Act. [42 U.S.C. §300j-4(b)(1), SDWA §1445(b)(1)]

WATER QUALITY

- Federal, state, and local requirements and sanctions regarding safe drinking water and underground injection shall apply to federal agencies, although waivers may be granted. [42 U.S.C. §300j-6, SDWA §1447]
- The Act establishes jurisdictional and procedural requirements relating to judicial review. [42 U.S.C. §300j-7, SDWA §1448]
- Any person may bring a citizen suit against alleged violators or the Administrator. [42 U.S.C. §300j-8, SDWA §1449]
- The statute provides PWS with federal funding through the creation of state revolving loan funds for states with primary enforcement responsibility. [42 U.S.C. §300j-12, SDWA §1452] The funds are to be used solely for providing loans to PWS for expenditures that will facilitate compliance with NPDWRs. [42 U.S.C. §300j-12(a)(2), SDWA §1452(a)(2)]
- States exercising primary enforcement responsibility must conduct source water quality assessments of and identify the contamination threats at all PWS drinking water sources. [42 U.S.C. §300j-13, SDWA §1453] States may establish a source water petition program that allows local governments to enter incentive-based

partnerships with polluters to solve contamination problems. [42 U.S.C. §300j-14, SDWA §1454]

Drinking water coolers with lead-lined tanks

- The Administrator shall identify each brand and model of drinking water cooler that is not lead-free. [42 U.S.C. §300j-23(a), SDWA §1463(a)]
- The Consumer Product Safety Commission shall issue an order requiring manufacturers and importers of coolers with lead-lined tanks to repair, replace, or recall them within one year after October 31, 1988. [42 U.S.C. §300j-22, SDWA §1462]
- No person may manufacture for, or sell in, interstate commerce any drinking water cooler that is not lead-free. The Act authorizes civil and criminal penalties for violations. [42 U.S.C. §300j-23(b), SDWA §1463(b)]

Lead contamination in school drinking water

- Each state shall establish a program to assist local educational agencies in testing for and remedying lead contamination in school drinking water. [42 U.S.C. §300j-24(d), SDWA §1464(d)] The Administrator shall make grants to states to establish and carry out these programs. [42 U.S.C. §300j-25, SDWA §1465]

**Refuse Act of 1899 (Section 13 of the Rivers and Harbors
Appropriation Act of 1899)**
33 U.S.C. §407

- It is unlawful to throw, discharge, or deposit any refuse matter, other than that flowing from streets and sewers and passing into a liquid state, into U.S. navigable waters or tributaries of navigable waters. [33 U.S.C. §407]
- This prohibition does not extend to operations for the improvement of navigation and the construction of public works. [33 U.S.C. §407]
- When anchorage and navigation will not be injured, the Secretary of the Army may permit the deposit of material into navigable waters. [33 U.S.C. §407] [Note: Federal Water Pollution Control Act (FWPCA) §402 (33 U.S.C. §1342) provides that after October 18, 1972, no permits shall be issued under §13 of the Rivers and Harbors Appropriations Act of 1899; any such permits are to be issued under FWPCA §402 (33 U.S.C. §1342). However, permits issued under the 1899 Act continue in effect unless revoked, modified, or suspended.]

WILDLIFE

Endangered Species Act 16 U.S.C. §§1531–1544

Congressional statement of policy

- It is the policy of Congress that all federal departments and agencies shall seek to conserve endangered and threatened species, and shall cooperate with state and local agencies to resolve water resource issues in concert with the conservation of endangered species. [16 U.S.C. §1531(c), ESA §2(c)]

Determination of endangered and threatened species

- The Secretary of the Interior or the Secretary of Commerce, depending on their program responsibilities pursuant to the Reorganization Plan No. 4 of 1970 (the Secretary), shall determine whether any species is an endangered or threatened species because of habitat destruction, overutilization, disease or predation, the inadequacy of existing regulatory mechanisms, or other factors. [16 U.S.C. §1533(a)(1), ESA §4(a)(1)]
- “Species” refers to any subspecies of fish, wildlife, or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature. [16 U.S.C. §1532(16), ESA §3(16)]
- “Endangered species” means any species that is in danger of extinction throughout all or a significant portion of its range. [16 U.S.C. §1532(6), ESA §3(6)]
- “Threatened species” means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. [16 U.S.C. §1532(20), ESA §3(20)]
- When determining that a species is endangered or threatened, the Secretary shall, to the maximum extent prudent and determinable, designate the **critical habitat** of the species. [16 U.S.C. §1533(a)(3), ESA §4(a)(3)] “Critical habitat” means specific areas within the geographical area occupied by the species at the time it is listed, where physical or biological features exist that are essential to the conservation of the species and that may require special management considerations, and specific areas outside the geographical area occupied by the species at the time it is listed that the Secretary determines to be essential for the conservation of the species. [16 U.S.C. §1532(5), ESA §3(5)]
- The Act establishes the procedures under which the Secretary shall designate endangered and threatened species and critical habitats, including the procedures by which the Secretary shall respond to petitions under 5

U.S.C. §553(e) (of the Administrative Procedure Act) for the addition or removal of a species from the endangered or threatened species list. [16 U.S.C. §1533(b), (c), ESA §4(b), (c)]

- Whenever any species is listed as threatened, the Secretary shall issue such regulations as the Secretary deems necessary and advisable for the conservation of the species. [16 U.S.C. §1533(d), ESA §4(d)]
- The Secretary shall develop and implement **recovery plans** for the conservation and survival of endangered and threatened species. [16 U.S.C. §1533(f), ESA §4(f)]
- The Secretary shall implement a system, in cooperation with the states, to monitor for at least five years species that have recovered enough to have been removed from the threatened or endangered species list. [16 U.S.C. §1533(g), ESA §4(g)]

Land acquisition

- The Secretary (or the Secretary of Agriculture, with respect to the National Forest System) shall establish a **program to conserve fish, wildlife, and plants**, and is authorized to acquire lands and waters to carry out the program. [16 U.S.C. §1534, ESA §5]

Cooperation with states

- The Secretary shall cooperate to the maximum extent practicable with states, and may enter into **management agreements** with states for the administration of particular conservation areas. [16 U.S.C. §1535(a), (b), ESA §6(a), (b)]
- The Secretary is authorized to enter into a **cooperative agreement** with any state that establishes and maintains an **adequate and active program** for the conservation of endangered and threatened species, to assist in implementing the state program. [16 U.S.C. §1535(c), ESA §6(c)]
- The Secretary is authorized to provide **financial assistance** to states that have entered into cooperative agreements, and shall also establish a **cooperative endangered species conservation fund** to carry out the provisions of this section. [16 U.S.C. §1535(d), (i), ESA §6(d), (i)]
- **State laws or regulations** regarding the import or export of endangered or threatened species are void to the extent that they permit what is prohibited by the Act or regulations promulgated under it, or prohibit what is authorized by an exemption or permit under the Act or regu-

lations promulgated under it. [16 U.S.C. §1535(f), ESA §6(f)]

- State laws or regulations concerning the **taking** of endangered or threatened species may be more, but not less, restrictive than the Act or regulations promulgated under it. [16 U.S.C. §1535(f), ESA §6(f)]

Interagency cooperation

- Each federal agency shall, in consultation with the Secretary, ensure that any action authorized, funded, or carried out by the agency is not likely to **jeopardize** the continued existence of any endangered or threatened species, or adversely modify a critical habitat. [16 U.S.C. §1536(a)(2), ESA §7(a)(2)]
- The Act establishes the procedures by which the effects of proposed agency actions shall be determined in consultation with the Secretary. The Secretary shall determine what conditions are necessary to minimize any adverse effects of the proposed agency action. [16 U.S.C. §1536(b), ESA §7(b)]
- After initiation of the consultation process, the federal agency and any permit or license applicant involved shall not make any **irreversible or irretrievable commitment** of resources that would foreclose the implementation of reasonable and prudent alternatives. [16 U.S.C. §1536(d), ESA §7(d)]
- The **Endangered Species Committee**, composed of federal agency heads and representatives from states, shall consider applications for exemptions from the requirement that federal actions not jeopardize endangered or threatened species or adversely affect their habitats. The Act establishes the circumstances under which the Committee may grant such exemptions. [16 U.S.C. §1536(e)-(p), ESA §7(e)-(p)]

International cooperation

- The President may provide **financial assistance** to any foreign country for development and management of programs in that country for the conservation of endangered or threatened species. [16 U.S.C. §1537(a), ESA §8(a)]

Prohibited acts

- It is unlawful to **import, export, take, or trade** any endangered species of **fish or wildlife**. [16 U.S.C. §1538(a), ESA §9(a)] To “take” includes harassing, harming, hunting, killing, capturing, and collecting. [16 U.S.C. §1532(19), ESA §3(19)] It is also unlawful to violate any

regulation pertaining to endangered or threatened species of fish or wildlife. [16 U.S.C. §1538(a)(1)(G), ESA §9(a)(1)(G)]

- It is unlawful to **import, export, remove and reduce to possession** from an area under federal jurisdiction, **maliciously damage or destroy** in any federal area, remove or damage in any other area in knowing violation of state law, or **trade in interstate or foreign commerce**, any **endangered plant species**. It is also unlawful to violate any **regulation** pertaining to endangered or threatened plant species. [16 U.S.C. §1538(a)(2), ESA §9(a)(2)]

- It is unlawful to engage in any trade contrary to the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. [16 U.S.C. §1538(c), ESA §9(c)]

- Federal actions for which the Endangered Species Committee grants exemptions do not constitute prohibited takings. [16 U.S.C. §1536(o), ESA §7(o)]

- The Secretary may issue **permits** for otherwise prohibited actions if they are for scientific purposes or if they result in takings that are incidental to otherwise lawful activities. [16 U.S.C. §1539(a)(1), ESA §10(a)(1)]

- The Act establishes the circumstances under which subsistence takings, articles made from endangered or threatened species, noncommercial transshipments, and activities that would cause **undue economic hardship** if prohibited may be **exempt** from prohibition. [16 U.S.C. §1539(b)-(i), ESA §10(b)-(i)]

Penalties and enforcement

- The Act establishes **civil and misdemeanor criminal penalties** for violations. [16 U.S.C. §1540(a), (b), ESA §11(a), (b)]
- The Act authorizes **searches, seizures** of wildlife and other property, and **arrests** for purposes of enforcement. [16 U.S.C. §1540(e), ESA §11(e)]
- Any person may bring a **citizen suit** against alleged violators or the Secretary. [16 U.S.C. §1540(g), ESA §11(g)]

Migratory Bird Treaty Act **16 U.S.C. §§703–712**

Prohibitions

- Except as provided under the Act, it is **unlawful to take, possess, or offer to sell a migratory bird**, or any part, nest, or egg of a migratory bird, that is included in the terms of the conventions between the United States and Great Britain, the United States and Japan, the United States and Mexico, and the United States and the Union of Soviet Socialist Republics for the protection of migratory birds. (The Russian Federation continues to perform the rights and fulfill the obligations of international agreements signed by the former Union of Soviet Socialist Republics.) This prohibition applies to products made in whole or in part from a migratory bird, or any part, nest, or egg of a migratory bird. [16 U.S.C. §703]
- **Interstate and international transport** of a migratory bird, or any part, nest, or egg of a migratory bird, is prohibited if it was taken, killed, or transported in violation of the laws of the district where it was taken or killed, or from which it was transported. Any bird taken in violation of the laws of the Provinces or Dominion of Canada may not be transported through or imported into the United States. [16 U.S.C. §705]
- Any state or territory may provide protection above the level set by these conventions, but may not extend the presidentially approved open season. [16 U.S.C. §708]

Exceptions

- The Secretary of the Interior may allow **some taking** of migratory birds when compatible with the terms of these

conventions and with due regard for the distribution and abundance of the species. Regulations establishing an open season for any migratory bird become effective with the President's approval. [16 U.S.C. §704]

- The Act allows breeding of migratory birds for sale as food under proper regulations. [16 U.S.C. §711]

Enforcement

- An employee of the Department of the Interior may arrest without a warrant an individual who violates the Act in the employee's presence, may execute a warrant or other process under the Act, and may search any place with a search warrant. [16 U.S.C. §706]
- **Criminal penalties** apply to violations of the Act. A person knowingly violating the Act with the intent to sell or offer to sell a migratory bird, or any part, nest, or egg of a migratory bird, may be convicted of a **felony**. [16 U.S.C. §707]
- Any migratory bird, or part, nest, or egg of a migratory bird, taken, possessed, or offered for sale in violation of the Act shall be forfeited to the U.S. government on the offender's conviction. [16 U.S.C. §706]
- Equipment and vehicles used to violate provisions of the Act are forfeited to the U.S. government on conviction of a felony violation. Forfeiture of equipment and vehicles is in addition to any fine and jail time. [16 U.S.C. §707]